

**BEFORE THE POSTAL RATE COMMISSION
WASHINGTON, DC 20268-0001**

RECEIVED
SEP 22 3 00 PM '00
POSTAL RATE COMMISSION
OFFICE OF THE CLERK

POSTAL RATE AND FEE CHANGES, 2000

)
)
)
Docket No. R2000-1

**REPLY BRIEF OF
THE NATIONAL NEWSPAPER ASSOCIATION**

Tonda F. Rush
King & Ballou
PO Box 50301
Arlington, VA 22205
(703) 241-1480

Xenia "Senny" Boone
NNA General Counsel
1010 N. Glebe Rd
Arlington VA 22201
(703) 907-7930

Counsel to the National Newspaper
Association

September 22, 2000

Table of Contents

| | | |
|-------------|--|-----------|
| I. | Introduction and Summary | 3 |
| II. | The Postal Service's protests attempt to mask the fact that the sampling system for in-county volumes is thinly-populated and infrequently updated. | 4 |
| | A. The sampling panel was constructed in 1996. | 4 |
| | B. AIC 224 played no role in this docket | 5 |
| | C. The stratification was dictated by the data, not charity | 6 |
| III. | The Postal Service papers over its lack of explanation for the problems NNA raises by criticizing NNA. | 7 |
| | A. The meetings are mischaracterized. | 8 |
| | B. The Postal Service unnecessarily disparages NNA's offering of data, and mis-states its purpose. | 9 |
| | C. NNA's study is as reliable as some estimates offered by USPS as valid in this docket. | 13 |
| IV. | Conclusion | 15 |

I. Introduction and Summary

A critical aspect of the National Newspaper Association's direct case seeks the Commission's attention to deficiencies in the Bulk Revenue, Piece and Weight (BRPW) system used to produce totals for within county (hereafter in-county) volumes. The Postal Service makes a number of deceptive assertions about record evidence and where it lacks evidence, substitutes vitriol against NNA for objecting to the output of its sampling system.

Contrary to the Postal Service's assertions, NNA does not offer data to substitute for BRPW outputs of in-county volumes, nor could it achieve such an offering without access to extensive post office and mailer records that most likely would never be afforded by USPS. It does not suggest malice by the Postal Service in producing data indicating volume decline, although the highly-defensive tone of the Postal Service would lead an unsuspecting reader to conclude the integrity of the institution has been impugned. NNA does not suggest that, even as the sole party in this case with a direct interest and expertise in in-county, it has perfect answers to apparent problems with the volume data. Nor does it seek relief simply because it represents small, community newspapers, as the Postal Service suggests. Initial Brief of the United States Postal Service, III-13. NNA simply urges the Commission to declare the data insufficient and, in the absence of better performance by BRPW, to make

adjustments that will inflict no harm upon the Postal Service but will prevent small newspapers from unfairly suffering rate blows because of weak data.

II. The Postal Service's protests attempt to mask the fact that the sampling system for in-county volumes is thinly-populated and infrequently updated.

A. The sampling panel was constructed in 1996.

Nearly half of in-county volumes derive from a sampling system of post-offices not on the PERMIT system. Tr.46-D/21240. NNA asserted in its initial brief that the reliability of the sampling system is weakened by thin sampling and infrequent updating. Initial Brief of the National Newspaper Association, II A-D, at 3-16.

The Postal Service offers nothing to explain the thin sampling. It does not even address the issue on brief. It simply ignores NNA's assertion that sampling 4 or 5 offices out of each population stratum--strata that range from 94 to 2642 offices (Tr. 2/907)--undermines BRPW's accuracy.

With respect to updating, the Postal Service appears to disclaim the testimony of its own BRPW witness Hunter that the panel used in this docket is rather old by insisting it was created for this docket. USPS Initial Brief at III-14. But witness Hunter specifically explained the panel on the witness stand: it was

constructed in 1996 upon data representing 1995 periodicals revenues and was used to construct the base year volumes. Tr. 2/930-31. Also, in response to NNA's request for a detailed explanation of any changes made during the past 12 years, Hunter points out several operational or statistical changes, but says nothing about updates for this docket. Tr. 2/773. Hunter made clear on the stand that he considered the 1996 panel adequate, thought the data were relatively fresh, and saw no need to update it for the docket. Id. But it is obvious that any changes in mailer patterns between 1996 and 1998 would be overlooked by this panel. Witness Hunter even acknowledges that if any office had acquired periodicals revenues for any time relevant to this docket since the initial survey, its volumes would not be represented in the panel. Tr. 2/931. But he expects any omissions, as well as any errors that have crept in to the sample, to be corrected in a trial balance control, by which his "truing up" to revenue accounts allows him to correct deficiencies in the sample data. Tr. 2/932.

B. AIC 224 played no role in this docket.

It is particularly odd, then, given the importance assigned to the trial balance accounts used for this truing up, Tr. 2/932, that the Postal Service touts the recent creation of a new in-county revenue account, AIC 224, as evidence of its concern for in-county. Both on the record and on brief, it admits the general periodicals revenue code, not AIC 224, was used to construct the volumes in this case. Tr. 2/933. USPS Initial Brief, III-15. While AIC 224 may ultimately be useful

in establishing a benchmark for validity of BRPW sampling data, the new account code offers nothing to this docket.

C. The stratification was dictated by the data, not charity.

Finally, the record is not clear on the motivation for constructing the panel as it is. The Postal Service apparently wants the Commission to believe that the construction was intended primarily to satisfy NNA when it points out that the strata were defined by using In-County revenue, USPS Initial Brief at III-14. Hunter at first leaves the impression that the sampling strata were set up solely for use with in-county. Tr. 2/923. But it later becomes clear that the strata are set up to capture data for all the periodicals subclasses, even though the submitting offices may be grouped according to in-county revenues. Tr. 2/927. Witness Hunter considers that he devotes "a considerable amount of attention" to in-county for the size of the subclass. Tr. 2/923.

That may be. But whether the strata were so defined out of affection for NNA and in-county or simply because it made sense to structure the sampling of non-PERMIT (usually rural) offices around the subclass with the greatest proportionate rural volume is open to debate. In-county seems simply to be the periodicals subclass with the most volume holes left by PERMIT's output. A review of the output from the 1996 strata shows that In-County, (designated as RI on the table entitled New 2c Panel, Tr. 2/907, Tr. 2/909) pulls 43% of its revenue from Strata 2.1 to 3.0, the "non-certainty" strata. Regular rate subclass

pulls only about 4% from these strata and the non-profit subclass derives a similarly small percentage from them.

It is obvious that to construct volume data for these subclasses, the Postal Service is more dependent upon the sampled offices for in-county than for any other subclass. Constructing the strata around the most robust revenue data within the population is sensible, but not necessarily worthy of the postal charity award, as the Postal Service seems to invite us to conclude. USPS Initial Brief at III-14.

III. The Postal Service papers over its lack of explanation for the problems NNA raises by criticizing NNA.

The tone of derision and indignation struck by the Postal Service on brief may be more revealing of the nature of this problem than anything NNA could demonstrate. It suggests that NNA failed to live up to its obligations between rate cases. It impugns NNA's attempts to provide guidance on the nature of the problem by condemning its research as a "quickie" study. It puts words in NNA's mouth by suggesting that NNA claims to prove increasing in-county volume. USPS Initial Brief at III-14 to 16. Its sleight-of-hand should not be permitted to confuse the issue before the Commission, which is the reliability of the sampling data. The facts, however, should be clear from the record.

A. The meetings are mischaracterized.

The characterization of meetings between the parties is revisionist. NNA's witness Heath agrees that two meetings occurred between R97-1 and this docket. Tr. 24/10944. He states that in the meetings he found that Postal Service's BRPW witness defensive and, consistent with the tone on brief, more interested in attacking NNA than addressing the problem. Tr. 24/ 10982. The Postal Service counsel even tacitly acknowledges that all was not well in these meetings. Id.

Inviting the Commission to judge the quality of diplomacy between the parties is a waste of the Commission's time in a docket as demanding of attention to bigger issues as this one. But, should the Commission wish to examine the clean hands of the parties, it can review the transcripts at 24/10981-11008. It will find NNA was offered a list of post offices with reported volume declines for checking against whatever mailer data it could obtain from newspapers. After NNA discovered the post office reports came only from PERMIT data that were not at the time in dispute, it abandoned verification efforts. (Tr.24/10983-10990) and asked for records from the offices that were in dispute: the offices in the sample. The request was refused. NNA began its own study of newspaper in-county volume and offered to meet with the Postal Service at its conclusion, but was again refused. Tr. 24/10944. Correspondence placed on the record by the Postal Service shows the nature of this discussion and further reveals which party cut off further communication:

"You additionally stated, if the January listing were drawn exclusively from PERMIT offices, NNA now wishes to obtain similar information for non-PERMIT offices so that NNA might explore a similarity in trends between 'large' and 'small' offices. At this time the Postal Service is unable to provide this additional information to you....At this time, our plan is to turn towards upcoming Commission initiatives and we expect that further opportunities to explore these issues may arise in such a context." Letter from USPS attorney Anne Reynolds to NNA counsel Tr. 2/10999.

Her colleague, Mr. Hollies, confirmed a month later that the discussions had ended. Tr. 2/11100.

B. The Postal Service unnecessarily disparages NNA's offering of data, and mis-states its purpose.

The Postal Service's disparagement of NNA's volume study is unwarranted. The disdain it exhibits here characterizes its response to NNA's pleas for a better BRPW.

In Docket R97-1, NNA first began to examine the problem of seemingly declining in-county volume. References to earlier NNA efforts to test the trend against the little data it then had available are made in passing by the Postal Service's brief at III-15, and are given glancing blows by the above cited letters, which are not in evidence because Mr. Heath could not authenticate them. Tr. 24/10991-11001. Suffice to say, NNA has offered only one collection of data on this record that can be used by the Commission to test the validity of the BRPW

for in-county and that is the study explained by NNA witness Elliott, NNA-T-2, at Tr. 24/ 11040 to 11051.

A study costing a small association \$75,000 (Tr. 24/10948) and using well-respected economics consultants Project Performance Corporation may constitute a "quickie" study to a \$62 billion monopoly corporation that can freely spend ratepayers' money to prove its point. But to NNA, the study was no small undertaking. Nor is it an easy matter to retrieve data from busy newspaper publishers. Unlike witness Hunter, who can evidently compel his respondents to provide data, (Tr. 2/941-3), private associations can only ask their busy members--who have many other duties besides responding surveys--to respond. Tr. 24/11004. NNA produced this study precisely because the BRPW staff assailed NNA's 1997 efforts as statistically irrelevant and continued a campaign to obtain the irrelevant raw data so it could prove the point. The formal volume study, released in 1999, was the first NNA had conducted under accepted statistical practices and it produced a valid statistical result for the questions asked. It indicated that volumes presented by newspapers for in-county mailing were not dropping, but were growing modestly. Tr. 24/11046.

It could be predicted that the Postal Service would make great fun of David's attempt to take on Goliath. Admittedly, the study does not conclusively prove anything at all about BRPW. Nor was that NNA's purpose. Proving what is going on with BRPW is solely within the purview of the Postal Service.

But the nature of Goliath's criticisms misses the point entirely.

NNA does not claim that its study shows in-county volume *in toto* is increasing. Rather, witness Heath talks only about what he knows: newspapers. Tr. 24/10908. He does not offer his volume data as a substitute for BRPW data. He merely asserts that it would appear that newspaper usage drives the subclass and that NNA's study of newspapers indicates the volumes *submitted by them* are on the increase. *Id.* Since the Postal Service offers nothing on the mail-mix in this subclass and since it declined an opportunity in rebuttal to show non-newspaper mailers are driving a downward trend, it is safe to assume the Postal Service doesn't know what is going on. The message in this docket is that it cannot explain the trend nor can it defend its meager sampling system. It resents being asked for an explanation and will defend its system even in the face of repeated doubts by NNA and the Commission. Ironically, the Postal Service, ever in the quest for volume, here wishes to prove that its customers are not using its service and it doesn't care why.

The Postal Service can find only one minor quibble with NNA's study. Its feeble attempt came on oral cross of witness Heath when the Postal Service explored the distinctions between "pieces" (the argot of the Postal Service) and "copies" (a newspaper term.) Obviously in a survey of newspaper publishers the use of terms understood by them would be preferred to postal jargon. Had the

Postal Service been able to uncover a meaningful difference between the two terms, its objections to the terminology might carry some weight. But all it could do was probe the possible use of "firm bundles," a practice by which multiple pieces are sent to a single address. Tr. 24/ 11011. Heath reasonably responded that he believes the practice is minimal and that the impact upon volumes from this little-used practice would not be significant. Id. The Postal Service has offered nothing to refute witness Heath on this point, but if it had data showing wide usage of firm bundles by within county newspapers, it certainly has had the opportunity to present those figures.

The Postal Service's claim that the study did not cover a wide population of mail users fails upon a faithful examination of the study. The study covered all newspapers in the NNA database, which as witness Heath attests, attempts to include every daily and weekly newspaper in the nation. Tr. 24/11011. While some may have been omitted, the study was hardly limited to a small population. Why the Postal Service suggests that responses seeking in-county volume do not "bear specifically upon in-county volume," (USPS Initial Brief at III-15) is inexplicable unless USPS wishes to suggest that the respondents lied or were confused. There is no evidence to suggest such mendacity by NNA, its consultant or its respondents.

The Postal Service further suggests NNA tried to signal to its respondents that high volume numbers were sought. But the letters used in the survey are on

the record and may be examined by the Commission. Their only shibboleth to respondents was to help NNA to fight higher rates. A respondent unschooled in the arcane costing methods of the Postal Service might reasonably conclude that smaller volume figures were preferable to larger ones so that the postal bill would not be so high. He or she would then submit lower than actual numbers. So, if bias were suggested in the joining of the battle against higher rates, it would as likely produce lower as higher figures. But nothing in these letters indicates what outcome NNA was seeking, and as witness Heath attested, the association undertook the study even though it thought it faced considerable risk in so doing. It felt it might well succeed in proving only that volumes were in fact declining, but it felt compelled to seek the truth anyway. Tr. 24/11003.

C. NNA's study is as reliable as some estimates offered by USPS as valid in this docket.

The Postal Service distorts the statistical confidence of the NNA survey. The Postal Service states:

The coefficient of variation, nearly 300 percent (Tr. 24/11088, 11094) speaks for itself, but looks worse when compared with that of RPW. USPS Initial Brief at III-16.

The comparison the Postal Service suggests is meaningless. The coefficient of variation of nearly 300 percent for the NNA survey applies to the change in In-County newspaper volume from 1992 to 1998. The Postal Service does not report coefficients of variation for measures of changes in volume from year to

year, so there is simply no way to make a comparison between the figure of 300 percent and any coefficient of variation supplied by the Postal Service. Tr. 24/11095.

The Postal Service brief focuses on an apples-to-oranges comparison, when the record provides the ability to make a clear apples-to-apples comparison. The Postal Service provides coefficients of variation for in-county volume estimates for individual years rather than for changes between years. As witness Elliott noted in an interrogatory response, the Postal Service's coefficient of variation for its In-County volume estimate for FY 1998 is 2.2 percent. In contrast, the coefficient of variation for the 1998 newspaper In-County volume estimate from the NNA survey is 11.8 percent. Tr. 24/11098. This coefficient of variation for the NNA survey is larger than the Postal Service's own coefficient of variation for In-County volume, but the NNA figure is not unacceptably large and it is smaller than some of the coefficients of variation for other volume estimates reported by the Postal Service. USPS-T-5 at 8-9.

Rather, when a statistically meaningful comparison is performed, it appears that the statistical reliability of the Postal Service's BRPW numbers is not that much better than the statistical reliability of NNA's limited survey, performed by a small association. Given the fact that 43 percent of the Postal Service's In-County volume estimates comes from a sample of only 25 non-automated offices, (Hunter Response to question from NNA at Tr. 2/915, Tr. 46-

D/21240; LR-I-230 Appendix A at 3 and Tr.21/8478.) it's not surprising that the Postal Service wants to divert attention to NNA's study. The fact is, neither BRPW nor NNA's survey can tell the Commission conclusively what the in-county volumes for the base year were. But only one of the two sponsors offering data has the burden of proof for producing those numbers.

IV. Conclusion

Arriving at accurate data for small volumes within the massive USPS system may not be an easy task. BRPW has been under scrutiny for good and sufficient reason for most of the past decade. The Commission cannot invent good data. Nor can it completely make whole the parties who are injured, if unintentionally, by the data flaws. Neither can it insist upon a sense of perspective from the Postal Service when it spews ire at those who complain of the injury. The Postal Service's irritation at being challenged by this small problem is out of proportion to the size of the needed correction: a better, more robust sample, and a genuine attention to the reasons for volume decline, if that is really what's happening in the system. The Commission may not have jurisdiction over civility in this case. But it is empowered to adjust data within supportable limits on the record. It can set standards for acceptable levels of accuracy. It can and should use its discretion to mitigate the impact of a faulty BRPW system upon small newspapers while it continues to press for improvements.

Respectfully submitted,



Tonda F. Rush
KING & BALLOW
PO Box 50301
Arlington VA 22205
(703) 241-1480

Certificate of Service

I hereby certify that I have caused this document to be served upon all participants in this proceeding in accordance with Section 12 of the rules of practice this 22nd day of September, 2000.



Tonda Rush